REPORT TO THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

BY

THE MINISTER

FOR

ABORIGINAL RIGHTS AND CONSTITUTIONAL DEVELOPMENT

THE HONOURABLE JAMES J. WAH-SHEE

-March 1981

Part 3, section 7 of the Aboriginal Rights and Constitutional Development Sessional Paper passed at the June session of this Assembly, instructs the Minister to report back to the Assembly from time to time on activities within his area of responsibility. I am pleased to take this opportunity to bring you up to date on events from the Government of the Northwest Territories perspective in the aboriginal rights area since that time, to advise you on our role in the negotiations and on the operation of the Secretariat.

The Aboriginal Rights and Constitutional Development Secretariat was formed in July and I was appointed Minister at that time. During the fall my staff and I met on a number of occasions with all of the native associations to discuss various issues relating directly to aboriginal rights and other items of mutual concern. We have continued to communicate fairly regularly since.

COPE

Negotiations between COPE and Canada resumed in late summer and four sessions have been held. I met with COPE in September to review in detail GNWT concerns with the Agreement-in-Principle in preparation for the resumption of negotiations. We had, what I considered to be, a very beneficial meeting with a frank exchange of views. We have participated fully in all the negotiating sessions and have been able to contribute in a positive and meaningful way. Unfortunately, negotiations are now in abeyance as a result of the Minister of Indian Affairs and Northern Development's well publicized letter of December 24 to his Chief Negotiator. I wrote Mr. Munro on January 30 objecting to what appeared to be a unilateral and arbitrary approach to decision making within the context of negotiations.

ITC

Negotiations between ITC and Canada began with the first meeting in late November. A second meeting was held in Eskimo Point, January 22-27.

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The GNWT has participated in these first two sessions and I look forward to participating in future negotiations. Bilateral meetings between ITC and Territorial government officials were held on February 16 and 17 in Yellowknife to discuss a number of areas of mutual concern.

Dene Nation

Negotiations between the Dene Nation and Canada have not yet started. The Dene Nation has requested the Minister of Indian Affairs and Northern Development to appoint a chief negotiator as soon as possible and I have written Mr. Munro urging him to accede to this request. The timing here is particularly critical in light of the recommendations contained in the Norman Wells Project EARP Report. We will be ready to participate when negotiations eventually begin.

Role of GNWT

The GNWT has been an active participant in all negotiations over the past six months. We have been well prepared for the discussions and I believe that we have been able to contribute in a positive and constructive way.

The basis of our mandate and the direction of our involvement comes from the Sessional Paper "Aboriginal Rights and Constitutional Development in the Northwest Territories", approved by this Assembly in June 1980 at Baker Lake. That paper clearly instructs this government to perform in a way that is co-operative with and supportive of the native associations. Nevertheless, it must be recognized that this government represents all citizens of the Northwest Territories and we have an obligation to reflect that responsibility at the negotiations. Consequently, we have attempted to develop responsible positions in the obviously important areas of non-claimant concerns, non-renewable resource development and public government. However, I must move cautiously because, as you can see, my mandate in these areas is weak.

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Section III (2) of the Sessional Paper instructs us to participate in the negotiations only if all parties concerned agree which means we can only attend the negotiations with the approval of the native associations.

This situation creates somewhat of a dilemma for myself and my staff. On the one hand I interpret my mandate to be telling me only to support and co-operate with native associations and requiring their agreement to participate in negotiations. On the other hand, we are a public government with definite responsibilities for all citizens which require that we represent the concerns of non-claimants as well as take independent positions in those areas where we have a responsibility. The issue is, do we look beyond the Sessional Paper for our direction and develop responsible positions which attempt to balance the needs of the different elements of NWT society or do we accept the Sessional Paper as our only direction and work primarily in support of native associations. I accept the latter view because the Sessional Paper, a well debated and considered document, is deliberate in restricting the role of the Government of the Northwest Territories. I raise this because concern has been voiced, among some members and in some areas of the public, that we may not be pursuing the balanced approach stated above. I understand these concerns; however, my priority, as I interpret my mandate from the Assembly, is to support and co-operate with native associations and, unless I am advised that my interpretation is wrong or my mandate is changed, this is what I must do.

A set of "Guidelines for Aboriginal Rights Negotiations" has been developed and approved by the Executive Committee. They are attached for your information. These guidelines are based on our interpretation of the Sessional Paper, various government policies and our responsibilities as a public government. They provide a framework

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for decision making within the various negotiations and they will be applied within the priorities identified in the Sessional Paper. All native organizations were consulted during the development of the guidelines.

Our role in the negotiating process is governed officially by the Memorandum of Understanding of October 1978 between the Commissioner and the Minister of Indian Affairs and Northern Development. The Sessional paper instructs me to review it. I have been reviewing it in the sense of paying careful attention to the effect it has upon me being able to discharge my responsibilities consistent with my mandate. It is not that we have been deliberately ignoring it, but the other parties do not seem to be particularly concerned about its status at this point in time and it has not been a problem. Eventually, we will modify it, however, I have been reluctant to undertake a major revision without having some experience functioning under our new mandate.

Under the Memorandum of Understanding the Territorial Government functions as a member of the federal team. We participate in planning the government positions and responses, and speak through the chief federal negotiator. We have been functioning essentially in this way, however, we have reserved the right to disagree with the federal government where we feel it is necessary to do so and advance independent positions where such positions are required by our mandate.

Role of the Aboriginal Rights and
Constitutional Development Secretariat

The role of the Secretariat is essentially to manage the participation of this government in the aboriginal rights negotiations. It is not designed to do all of the work. It is a co-ordinating function.

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The departments are responsible for policy and position proposals and for analyzing proposals put forth by the claimants in their area of responsibility as well as providing representatives to the Government of the NWT's negotiating team. The Government of the NWT negotiator is the senior spokesman and my representative at the negotiations. He is usually accompanied by a team of specialists (depending on the depth of the discussion and the nature of the item being negotiated) from the departments. Claims policy and positions are proposed by the applicable departments to their minister. The Secretariat provides an analysis of these proposals in terms of claims precedent, legislative mandate, Executive guidelines, negotiating strategy and dynamics. The Executive member concerned and myself then make the necessary decisions or refer to the whole Executive Committee, depending on the issue. Written instructions are then provided to the negotiator. The Secretariat personnel consists of five staff: the Executive Director, two negotiators, political development advisor and secretary. Three new staff positions have been approved for 1981/82 - a Dene negotiator and two analysts/researchers. Funds are available for consultants in areas where the needed expertise is not available within the public service.

Constitutional Development

Constitutional Development, in our context, has two aspects - political development within the NWT and the national constitution. My responsibility is with the former and the Leader of the Elected Executive has responsibility for the national constitution.

Two major projects are currently underway in the area of political development within the Northwest Territories - a proposal for the transfer of federal powers to the Government of the Northwest Territories and a response to the proposal for a Western Arctic Regional Municipality. The federal government has informed us that they will be making decisions this coming fall on the Drury report with respect to the transfer of powers and have invited us to submit a proposal. Work on this proposal

is now underway and I intend to table it for extensive discussion during the Spring session of the House.

The Committee for Original Peoples' Entitlement submitted a proposal for a Western Arctic Regional Municipality in the context of their aboriginal rights claim. COPE has asked this government for a response and I wrote the member for the Western Arctic on September 2, 1980, committing this government to work with the people of that area to develop a regional form of government if that is what they want. This Assembly passed a motion in Frobisher Bay supporting me in this effort and work is underway.

GNWT GUIDELINES FOR ABORIGINAL RIGHTS NEGOTIATIONS

The satisfactory resolution of aboriginal rights in the Northwest Territories is a necessary step in protecting and promoting the long-term interests of both native and non-native residents. The major issues of political change and economic development have been at an impasse which will not be broken until this important matter is dealt with by the federal government.

The resolution of aboriginal rights will unleash tremendous positive energies within the Northwest Territories, create an environment which will contribute to the quality of life of all residents and resolve the vast disparity of income, services, and general well being between native and non-native people. The Legislative Assembly has recognized this and wishes to contribute and participate in this important process. It has recognized aboriginal rights, agreed to the appointment of a Minister responsible for aboriginal rights and constitutional development, and approved a sessional paper giving direction to this Minister.

Preamble

The Government of the Northwest Territories recognizes that it is accountable to the Legislative Assembly and that this Assembly has a majority of native members. The major native groups represent and are accountable to their native membership who constitute a majority of the population of the Northwest Territories. The purpose of these guidelines is to recognize this reality and to direct the Government of the Northwest Territories' role in aboriginal rights negotiations to that of a supportive one on behalf of the native associations as directed by the Assembly's sessional paper, "Aboriginal Rights and Constitutional Development", adopted at the June 1980 session. At the same time the guidelines will recognize the Government of the Northwest Territories' responsibility to represent the interests of non-claimant residents as well.

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Guidelines

1. The GNWT recognizes that the primary purpose of aboriginal rights negotiations is to guarantee and protect the aboriginal rights of native people.

2. The GNWT supports the concept of public government in the Northwest Territories and will represent the interests of both claimants and non-claimants during negotiations.

3. The GNWT recognizes and supports the concerns expressed by native organizations that claims based upon aboriginal rights to land in the Northwest Territories may be prejudiced if large scale resource developments are allowed to proceed before substantial progress has been made towards a settlement.

4. The GNWT supports the right of native organizations to promote change in the present system of government in the Northwest Territories, during claims negotiations, on the understanding that proposals for such change will be submitted to the Legislative Assembly for consideration.

5. The GNWT will work co-operatively with native groups in their efforts to determine and control their future as distinctive cultural groups.

6. The GNWT will, in areas of land use overlaps, prevail upon the native associations involved to reach an equitable agreement amongst themselves.

7. The GNWT will work co-operatively with native organizations in economic and social development planning and implementation during negotiations.